

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MATTHEW G. SILVA,

Plaintiff,

v.

RICHARD McDERMOTT, *et al.*,

Defendants.

CASE NO. C07-1278-JCC-JPD

REPORT & RECOMMENDATION

Plaintiff, a state prisoner proceeding *pro se*, has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983, along with an application for leave to proceed *in forma pauperis* (“IFP application”). The complaint names as defendants the Honorable Richard McDermott, a judge on the King County Superior Court, Barbara Miner, Clerk of the King County Superior Court, and Craig Peterson, Deputy Prosecuting Attorney for King County. Plaintiff alleges that the defendants “conspired together to secret plaintiff’s motions from public record.” (Proposed Complaint at 3). Pursuant to 28 U.S.C. § 1915A, the Court has reviewed the complaint and IFP application, and, for the reasons stated below, the Court recommends that plaintiff’s IFP application be denied and that the complaint and this action be dismissed.

First, court records reveal that plaintiff has had three cases dismissed for failure to state a claim upon which relief can be granted.<sup>1</sup> The Prison Litigation Reform Act provides in pertinent part that:

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<sup>1</sup> The three cases are: *Silva v. State of Washington*, Case No. C98-659-WLD (W.D. Wash.), *Silva v. Bush*, Case No. C06-984-JLR (W.D. Wash.), and *Silva v. Clarke*, Case No. C05-414-MWL (E.D. Wash.).

1 In no event shall a prisoner bring a civil action [*in forma pauperis*] . . . if the prisoner  
 2 has, on 3 or more occasions, while incarcerated or detained in any facility, brought an  
 3 action or appeal in a court of the United States that was dismissed on the grounds that  
 it is frivolous, malicious, or fails to state a claim upon which relief may be granted,  
 unless the prisoner is under imminent danger of serious physical injury.

4 28 U.S.C. § 1915(g).

5 Thus, under this provision of law, plaintiff's IFP application is barred, notwithstanding his  
 6 indigency, unless plaintiff can show that he "is under imminent danger of serious physical injury." 28  
 7 U.S.C. § 1915(g). *See also Andrews v. King*, 398 F.3d 1113 (9<sup>th</sup> Cir. 2005). Neither plaintiff's IFP  
 8 application nor his complaint argue or show that he is under imminent danger of serious physical  
 9 injury. Accordingly, his IFP application should be denied.

10 Second, even if plaintiff were permitted to proceed *in forma pauperis*, his complaint here could  
 11 not proceed because the defendants are all protected by immunity. *See Ashelamn v. Pope*, 793 F.2d  
 12 1072., 1075 (9<sup>th</sup> Cir. 1986) (en banc) (judges shielded by absolute immunity); *Pomerantz v. County of*  
 13 *Los Angeles*, 674 F. 2d 1288, 1291 (9<sup>th</sup> Cir. 1982) (court employees shielded by quasi-judicial  
 14 immunity); *Imbler v. Pachtman*, 424 U.S. 409, 419 n.13 (1976) (prosecutors shielded by prosecutorial  
 15 immunity). Accordingly, plaintiff's complaint fails to state a claim upon which relief can be granted.<sup>2</sup>

16 For the foregoing reasons, plaintiff's IFP application should be denied and this matter  
 17 dismissed. A proposed Order reflecting this recommendation is attached.

18 DATED this 4th day of September, 2007.

19   
 20 JAMES P. DONOHUE  
 21 United States Magistrate Judge  
 22  
 23

24 <sup>2</sup> In addition, the Court notes that the publicly available docket of the King County Superior  
 25 Court shows that plaintiff has filed numerous motions, letters, and declarations since September 2005.  
 26 *See* Case No. 04-1-12167-8, available at "www.dw.courts.wa.gov." These filings undermine plaintiff's  
 claim that defendants "conspired together to secret plaintiff's motions from public record."